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## COMMONWEALTH OF VIRGINIA

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#### **For Immediate Release**

March 9, 2004

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#### **DMME Provides Information On Coalbed Methane Ownership Issues Following State Supreme Court Decision**

**Richmond, VA** – The Department of Mines, Minerals and Energy (DMME) today issued a news release regarding coalbed methane (CBM) ownership issues. The news release follows the March 5, 2004, Virginia Supreme Court ruling affirming the 2002 Buchanan County Circuit Court decision in *Ratliff v. Harrison-Wyatt*, which previously held that bare ownership of coal rights, without more, does not include ownership of the CBM associated with that coal. The issue of CBM ownership was a matter of first impression in Virginia by the Ratliff court.

“The purpose of today’s release is to provide information to the public that will help surface and mineral owners understand the Supreme Court’s decision and how it may affect their particular situation,” said DMME Deputy Director and Virginia Gas and Oil Board Chairman Benny Wampler. “We hope that the information we are providing will shed some light on the complex issues of ownership and correlative rights and on the duties and responsibility of the Gas and Oil Board, as well as on the process for mineral owners to bring a request before the Board,” said Wampler.

In *Ratliff*, a case that specifically applies to three particular tracts of land in Buchanan County, the Supreme Court upheld Circuit Judge Keary R. Williams’ ruling that, “[T]he grant of coal rights does not include title to the CBM absent an express grant of CBM, natural gases, or minerals in general.” Judge Williams also stated, “The surface owners’ rights to the CBM only extend to that which has separated from the coal.”

Judge Williams' opinion noted particularly that surface owners do not have any right to fracture the coal in order to retrieve the CBM. However, the Court did add that, once the coal is removed, the surface owners retain the ownership of the resulting void and have full rights to retrieve the CBM left behind, as well as the rights to profits from the CBM captured during the venting process. The CBM ownership rights held by the surface owners in Ratliff were derived from their ownership of all the minerals except the coal, which had previously been severed from the surface estate. Traditionally under Virginia law, the term "mineral" has included oil and gas. DMME's Division of Gas and Oil (Division) administers the Virginia Gas and Oil Act and regulations. Those set out requirements for regulating the effects of gas and oil operations both on and below the surface, issuing permits, inspection of well sites and gathering pipelines, reclamation of abandoned well sites, protection of correlative rights, and promotion of resource conservation practices. The Division also serves as staff to the Virginia Gas and Oil Board (Board).

The Board is empowered to pool oil and gas and coalbed gas interests of unleased owners, upon application and under certain circumstances, in any drilling unit in order to fulfill the State's dual objectives of allowing all owners to gain benefit from their mineral rights while achieving maximum utilization of the State's natural resources.

DMME is providing the following information to assist property owners who believe they have rights to CBM. The information includes various steps that must be taken by parties to resolve conflicts of ownership of CBM, and which are necessary before royalties can be paid to the owner(s) from the Board's escrow account.

The Virginia Gas and Oil Board is made up of seven members who are appointed by the Governor and approved by the General Assembly.

The Board is independent of DMME. DMME's Division of Gas and Oil serves as staff to the Board and is responsible for enforcement of Board orders and regulations.

Neither the Virginia Gas and Oil Board nor the Department of Mines, Minerals and Energy has the authority or mandate to adjudicate ownership of property rights.

When both coal owners and oil and gas owners claim ownership of coalbed methane, neither DMME nor the Board has any authority to resolve the question of ownership. Furthermore, neither the Virginia courts nor the legislature has addressed this ownership issue other than on the basis of analysis of individual deeds.

When there is a conflict of ownership between the coal and the oil and gas estates, the Board is required to establish an escrow account into which any royalties attributable to the conflicting claimants are to be deposited and maintained until the conflict is resolved.

Wachovia Bank manages the escrow account according to the terms of a service contract with the Board. The escrow account currently contains over eight million dollars. An additional amount in excess of 2.5 million dollars has been disbursed to owners since the 1990 inception of the Board.

Under Virginia law, funds deposited in the escrow account that are attributable to conflicting claimants can be disbursed only under two circumstances: (1) a final court decision has determined ownership, or (2) the parties to the conflict have reached a private settlement agreement resolving the dispute.

Persons who are identified as possible owners in the Board's escrow account and who wish to claim escrowed funds must be a named party to the court decision or voluntary agreement that addresses ownership of CBM on their specific tracts of land. Those persons must make application for disbursement to the Board in the form of a Miscellaneous Petition. The Petition must contain certain information, including affidavits and documentation supporting the basis for the requested disbursement. The application must also provide proof that all parties affected by the proposed disbursement have been notified of the application for disbursement and of the right to participate at the hearing on that application.

The petition will be placed on the hearing docket and heard by the Board at its regular monthly hearing, which is currently set for the third Tuesday of each month. Current and past dockets may be viewed at: <http://www.dmme.virginia.gov/Dgo/default.htm>.

If approval for disbursement is granted after this public hearing, the Board will issue an order instructing the escrow agent to transfer funds directly to the owner(s).

For additional information concerning CBM ownership issues or the role and procedures of the Virginia Gas and Oil Board, contact the Division of Gas and Oil in Abingdon at (276) 676-5423. However, the Department of Mines, Minerals and Energy, the Division of Gas and Oil, the Virginia Gas and Oil Board and the Office of the Attorney General cannot provide legal advice to private citizens in connection with their specific property or mineral rights. Such questions should be directed to a private attorney for individual advice and representation.

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